

and carried in lighters—several of which were too small to be well adapted to the service.—I do not believe, however, that the barge had capacity for 3,000 ties. On the only previous occasions when she is shown to have carried a similar cargo, she had on 2,328 to 2,363. One of her own witnesses, Mr. Dempsey, says 2,300 oak ties, such as are made in the neighborhood of King's Creek, is a full load for her, in his judgment. The libellant and his son put her capacity a good deal higher. In view of all the evidence touching this point I do not think it would be safe to credit her with a capacity to carry more than 2,400.

The libellant will be allowed a decree for the balance unpaid, estimating her capacity at this rate. If the parties agree on the sum to be paid, in this view of the facts, the expense of a reference will be avoided.

Otherwise a commissioner must be appointed.

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THE WILLIAM L. NORMAN.<sup>1</sup>

SMITH v. THE WILLIAM L. NORMAN.

(District Court, E. D. New York. November 20, 1891.)

SEAMEN'S WAGES—CANAL-BOATS—REV. ST. § 4251—WHAT IS CANAL-BOAT.

Section 4251, Rev. St. U. S., provides that "no canal-boat \* \* \* shall be subject to be libeled in any of the United States courts for the wages of any person who may be employed on board thereof," etc. On suit brought for the value of services rendered by the libellant on board the William L. Norman, in form a canal-boat, *held*, that a vessel engaged in navigating canals is a canal-boat, within the meaning of the statute, without reference to its form, and a boat not engaged in navigating canals is not a canal-boat, within the meaning of the statute, whatever may be its form.

In Admiralty. Suit against the William L. Norman to recover wages.  
*Stewart & Macklin*, for libellant.  
*Peter S. Carter*, for claimant.

BENEDICT, District Judge. This is an action to recover for services rendered by the libellant on board a vessel called the William L. Norman. This vessel was in form a canal-boat, and was employed in navigating the canal until April in the year 1889, when she changed owners. Since that time the vessel has not been engaged in navigating the canal, but has been employed in the harbor of New York, in transporting grain and other articles about the harbor. The principal question in the case is whether this boat is exempted from liability to be proceeded against for wages by reason of section 4251 of the Revised Statutes of the United States, which provide as follows:

<sup>1</sup>Reported by Edward G. Benedict, Esq., of the New York bar.

"No canal-boat, without masts or steam-power, which is required to be registered, licensed, or enrolled and licensed, shall be subject to be libeled in any of the United States courts for the wages of any person who may be employed on board thereof, or in navigating the same."

No case is found where this question has been decided. It is new in this court. Looking to the object of the statute, it seems to me that it must be held that the words "canal-boat," as used in the statute, refer to the employment in which the vessel is engaged at the time of the rendition of the service, and not to the form of the vessel. A vessel engaged in navigating the canals should, I think, be held to be a canal-boat, within the meaning of this statute, without reference to its form. A boat not engaged in navigating canals is, in my opinion, not a canal-boat, within the meaning of this statute, whatever may be its form. In this view the statute is no obstacle to the present action.

As to the defense that the boat has been sold since the rendition of the service, my opinion is that the transfer of the boat disclosed by the evidence does not affect the libellant's lien, nor does the case show laches sufficient to deprive the libellant of the right to recover the wages due him. If the parties do not agree upon the amount due, let there be a reference.

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THE MARIE, (DOMINICK DUPEE, Libellant.)

(District Court, D. Oregon. February 11, 1892.)

**NORWEGIAN VESSEL—CREW OF—AMERICAN CITIZEN.**

Any person who, in pursuance of any arrangement or contract, for a long or a short period or voyage, is on board of a Norwegian vessel, aiding in her navigation, is a member of the crew of such vessel, within the purview of article 13 of the treaty of 1827 between the United States and the kingdom of Norway and Sweden, and the consul of that country has exclusive jurisdiction of any difference arising between him and the master of such vessel; and it matters not if such person is an American citizen, and shipped at an American port.

(Syllabus by the Court.)

In Admiralty. Suit by Dominick Dupee against the steam-ship Marie. Exceptions to the libel sustained.

Mr. John Ditchburne, for libellant.

Mr. Edward N. Deady, for claimant.

DEADY, J. This suit is brought by Dominick Dupee against the steam-ship Marie to recover a balance of \$63.16 which he claims to be due him.

In the amended libel it is alleged that the libellant shipped at San Francisco on October 2, 1891, on board the steam-ship, as cook, at the monthly wages of \$35 per month; that he signed articles written in the Norwegian language, which were not interpreted to him nor understood by him; that libellant is informed that said articles contain a stipulation

that the port of discharge should be some place in Great Britain, but the libelant had an agreement with the master that he should have the right to leave the vessel at any port at which she might touch; that the vessel sailed from San Francisco for Departure Bay, in British Columbia, where she arrived on February 2, when the libelant demanded of the master his discharge and wages, which the latter refused, when, as it is implied rather than stated, he left the vessel without permission; that his wages during this period amounted to \$141.16, of which he has received \$78, leaving a balance due him of \$63.16, for which he prays a decree.

The claimant and master of the vessel, T. A. Schjott, excepts to the libel as follows:

The Marie is a Norwegian vessel, owned wholly by subjects of Norway and Sweden. That in and by the treaty between the United States and kingdom of Norway and Sweden all differences arising between the captains and crews of vessels belonging to the kingdom shall be settled by the consuls thereof, without the interference of the local authorities.

This treaty stipulation is contained in article 13 of the treaty of July 4, 1827. Pub. Treaties, p. 740.

Counsel for the defendant contends that an American citizen, shipping in an American port, with a right to leave the vessel at any port at which she may touch, is not within the purview of this treaty.

But it does not appear from the libel that the libelant is an American citizen. From his appearance in court, he is evidently a "colored" person of some nationality. However, it may be taken for granted he is an American citizen.

From an inspection of the articles, which have been exhibited to me, it appears they were signed by the libelant before the Swedish consul in San Francisco. They are a printed formula in the Norwegian language, with blanks filled with a pen, and at the bottom, in the same writing, there is a special clause in English, in these words: "This contract is binding for one year on the part of Dominick Dupee, or until the vessel reaches England." The signature of the libelant is immediately under this clause, and the master's also.

But this question must be disposed of upon the statement contained in the libel.

By the treaty the consuls of either nation have a right "to sit as judges and arbitrators in such differences as may arise between the captains and crews of the vessels belonging to the nation whose interests are committed to their charge, without the interference of the local authorities."

The words "crews of the vessels," as here used, include all of the ship's company,—all the seamen and officers, except the captain. Rap. & L. Law Dict. *verb.* "Crew;" *U. S. v. Winn*, 3 Sum. 209.

The crew of a vessel,—the ship's company,—in a general sense comprises all persons who, in pursuance of some contract or arrangement with the owner or master, are on board the same, aiding in the navigation thereof. It matters not whether the contract is verbal or in writing, or for a long or short voyage or period.

In this view of the matter, and taking the very improbable story of the libelant as to the terms of his shipment to be true, he was one of the crew of the *Marie* from the time he signed the articles in San Francisco until his arrival at Departure Bay. Here a "difference" arose between himself and the captain as to whether he was entitled to his discharge or not.

This is the very case provided for in the treaty, of which the consul is thereby made the "judge and arbitrator;" and this court, being a local authority, is prohibited from interfering with him. But it is contended that the treaty does not apply to an American citizen shipped at an American port on a Norwegian vessel, and, assuming that the libelant is such citizen, the consul has no jurisdiction and this court has.

In the case of *Ross v. McIntyre*, 140 U. S. 453, 11 Sup. Ct. Rep. 897, it was held that the petitioner, a British subject, who, while serving as a seaman on an American vessel, in the harbor of Yokohama, committed murder thereon, of which he was convicted by the consular tribunal for Japan, was an American seaman, and subject to the laws relating thereto.

Mr. Justice FIELD, speaking for the court, said:

"While he (Ross) was an enlisted seaman on the American vessel, which floated the American flag, he was, within the meaning of the statute and the treaty, an American, under the protection and subject to the laws of the United States equally with the seaman who was native born."

Of course, the doctrine of this case applies equally well to an American citizen who ships as a seaman on a foreign vessel. The libelant was for the time being a Norwegian, and owed obedience to the laws of Norway and Sweden.

The treaty of 1827 is a law of that kingdom, and by it the consuls of that country are given exclusive jurisdiction of all "differences"—controversies—between the captain and crew of a Norwegian vessel. This, in effect, forbids—disables—the libelant from resorting to any other tribunal for the settlement of such "difference." The treaty is also a law of the United States, and forbids this court from interfering in a case of a "difference" between the master and crew of a Norwegian vessel.

The libelant voluntarily assumed the obligations and restraints of a seaman upon a Norwegian vessel, and he must take the consequences.

The exception is sustained and the libel dismissed.

BLUE BIRD MIN. CO., Limited, v. LARGEY *et al.*

(Circuit Court, D. Montana. February 8, 1892.)

## 1. REMOVAL OF CAUSES—FEDERAL QUESTION—MINING ACTS.

Whether a certain mine is a "vein," "lode," or "ledge," within the meaning of Rev. St. U. S. §§ 2320, 2322, 2325, is a question of fact to be determined from the use of those terms among practical miners, and the decision thereof involves no federal question, within the meaning of the removal of causes acts.

## 2. SAME.

A question as to what is the top or apex of a vein is also one of fact, which involves no federal question.

## 3. SAME—DOUBTFUL QUESTION.

A cause is not removable when there is any doubt as to whether a federal question is presented.

## 4. SAME—PRIOR DECISION BY SUPREME COURT.

When the apex of a vein passes through one end line and one side line of the claim, the owner's rights are determined by *Iron Silver Min. Co. v. Elgin Mining & Smelting Co.*, 118 U. S. 198, 6 Sup. Ct. Rep. 1177, and the case comes under the rule that, when a proposition has been decided by the United States supreme court, it no longer involves a federal question.

## 5. SAME—PATENT BY UNITED STATES—QUESTIONS OF FACT.

The conveyance by patent of a vein or lode whose top or apex is cut by the end lines of the claim is a complete grant of the vein throughout its entire depth, although it may extend outside the vertical lines of the location, and hence any subsequent dispute as to boundaries is a controversy of fact, which involves no federal question.

At Law. Action in the state court by the Blue Bird Mining Company, Limited, against Patrick A. Largey and Lulu F. Largey to quiet title to the Blue Bird vein or lode. The cause was removed to this court by defendants, and is now heard on motion to remand to the state court. Granted.

*Forbis & Forbis*, for plaintiff.

*F. T. McBride*, (*E. W. Tbole*, of counsel,) for defendants.

KNOWLES, District Judge. This cause was commenced in the district court for Silver Bow county, state of Montana. Defendants filed their petition for a removal of the cause from that court to this. The parties are citizens of Montana. If this court has jurisdiction of this cause, it must be that its determination involves the decision of a federal question. Plaintiff brought its action in equity to quiet its title to the Blue Bird vein or lode, which it is alleged departs in its dip from the side lines of the Blue Bird lode claim into ground called the "Little Darling Lode," which is owned in part by defendants. Both plaintiff and defendants have a patent title to their respective claims. The petition for removal sets forth that plaintiff claims to have within the limits of its lode claim a certain vein, lode, ledge, or mineral deposit, carrying silver and other precious metals, which has its apex or top within the boundary lines of its said claim; and that said vein or lode is such a one as is within the meaning of the acts of congress mentioned in sections 2320, 2322, and 2325 of the Revised Statutes of the United States. It is further asserted that plaintiff claims that this Blue Bird vein or lode has its top or apex within the boundaries of the Blue Bird claim, and that said apex is crossed by the